# The Solicitors' Journal

VOL. LXXXVI. **Saturday, September 19, 1942.** No. 38



*Editorial, Publishing and Advertisement Offices:* 29–31, Breams Buildings, London, E.C.4. Telephone: Holborn 1403.
SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.
*Annual Subscription:* £3, *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 4d., *post free.*
ADVERTISEMENTS: Advertisements must be received not later than first post Tuesday, and be addressed to The Manager at the above address.
CONTRIBUTIONS: Contributions are cordially invited, and must be accompanied by the name and address of the author (not necessarily for publication) and be addressed to The Editor at the above address.

## Current Topics.

### Compensation and Betterment.

THE Final Report of the Uthwatt Committee on Compensation and Betterment was published on 10th September, 1942 (Cmd. No. 6386). It is, like the recently published report of Lord Justice SCOTT'S Committee on Rural Planning, a voluminous affair, and there has been no time as yet to examine it in detail. The committee was set up in January, 1941, under the chairmanship of Mr. Justice UTHWATT, to examine the problems of compensation and betterment in respect of public control and use of land and to advise what steps should be taken to prevent the work of post-war reconstruction being prejudiced. An Interim Report was published in June, 1941, in which the committee recommended that the Government should forthwith declare as a general principle that compensation in respect of the public acquisition or public control of land would not exceed sums based on the standard of values at 31st March, 1939, and that steps should be taken at an early date to set up a Central Planning Authority which should have power to control building and all other development throughout the country with a view to preventing work being undertaken which might be prejudicial to reconstruction. On 17th July, 1941, LORD REITH announced in the House of Lords the Government's acceptance of these recommendations, subject to certain qualifications. In their Final Report the committee expressly assumes that national planning is intended to be a reality and a permanent feature of the administration of the internal affairs of the country, directed to ensuring that the best use is made of land with a view to securing the economic efficiency of the community and the well-being of the individual. The system regarded as necessary for effective reconstruction is national planning with a high degree of initiation and control by the Central Planning Authority based on organised research and having the backing of national resources. The committee's first recommendation is that the State should acquire all rights of development in land outside built-up areas (subject to certain exceptions) on payment of fair compensation; that such compensation should be fixed as a single sum for the whole country and divided amongst owners whose land commands a development value in proportion to the respective development values of their land at 31st March, 1939, it being recommended that a supplemental fund should be set up to meet exceptional cases. That acquisition should be coupled with a compulsory power of acquiring the land itself when wanted, either for public purposes or approved private development. Control of development is to pass from the landowner to the State. In form the initial acquisition of the development rights is carried through by placing a restriction upon development, except under the authority of the Central Planning Authority, i.e., against treatment as building land or diversion to industrial purposes. If and when approved development is to take place the land itself will be purchased by the State at its then fair value (the development value which has already been paid for being disregarded), and where private development is in question the land will be leased to the developer. Until the land itself is required for development, the landowner remains in possession and control, save only that he may not "develop." Suggestions are also made under which, if the principle of the scheme is accepted, it may be brought into immediate operation.

### Further Recommendations.

WITH a view to due execution of planning policy, it is recommended that planning authorities should be given power compulsorily to purchase (*a*) war damaged areas and obsolete or unsatisfactory areas which need reconstruction as a whole, and (*b*) land which is not being developed in accordance with a planning scheme, with a view to disposition in favour of private developers or with a view to development themselves. Compulsory powers of acquisition in advance of requirements and for purposes of reinstatement are also recommended. When land has once passed into public ownership, it is recommended that it should be disposed of by way of lease only and not by way of sale. With a view to collecting betterment, the committee recommend a scheme for a periodic levy on increases in annual site values. The basis of the scheme is that site values should be ascertained quinquennially by the machinery used for rating purposes, and that a percentage of the increase (the figure suggested is 75 per cent.) should be levied and should be paid by the person actually enjoying or capable of realising the increased value. The proposal will not affect land subject to the development scheme referred to above until that land is developed. Until this site value scheme comes into operation, the "1939 ceiling" should be continued. Technical recommendations are made as to the procedure for obtaining and exercising compulsory powers of acquisition, the object being to secure speed. Further recommendations of a technical character are made with respect to the assessment of compensation on compulsory acquisition and for injurious affection. Market value remains the basis, subject to the important qualification that any increased value, or element of value due to the demand for land by local or other public authorities or statutory undertakers, should be eliminated. With respect to the Town and Country Planning Act, 1932, the committee recommend that the power of the Central Planning Authority to exclude compensation in respect of restrictions should not be limited, as at present, to particular provisions specified in the Act, but that (subject to certain general directions, and particular exceptions) it should be general; that the planning authority, subject to an appeal to the official arbitrator, should have power to place a "life" on "non-conforming" buildings and uses, with a view to securing conformity without compensation at the expiration of that "life," and that if conformity is required before the expiration of that "life," compensation should be assessed only by reference to the remainder of the "life." The committee are not agreed upon one proposal, but put it forward for consideration. This proposal is that all land in the country should be converted into leasehold interests for such a uniform term of years as might reasonably, without payment of compensation, be regarded as equitable, and subject to such conditions (enforcible by re-entry) as might be applicable under planning schemes. The committee suggest that there should be a Minister for National Development, who should have no departmental cares, but should have at his disposal a highly qualified staff informed as to economic conditions and competent to put forward proposals for consideration. They suggest that the planning functions of the Ministry of Works and Planning should be transferred to this new Minister who should have charge of the "development rights scheme." The administration of planning functions and development might, in the view of the committee, be put into the hands of a commission on the lines of the War Damage Commission, with a permanent chairman. The control of the Minister and, with that, control by Parliament, would be secured by giving the Minister power to issue directions to the commission. Finally, one member of the committee dissents upon the question of the elimination of the public demand in the ascertaining of market value and criticises the scheme for levying increases in annual site value. The proposals of the committee are well conceived, and, if speedily adopted, should go far towards preventing the speculative dealing in land which has been responsible for so much bad planning in the past.

### Board of Trade Enforcement Department.

IN answer to a question in the Commons on 8th September, on the work of the enforcement department of the Board of Trade, Mr. DALTON stated that there had been 772 prosecutions under the rationing and limitation of supply orders administered

by his department, and fines totalling £560,000 had been imposed, together with prison sentences totalling fifty-two years. Since 1st April, 1942, there had been 368 prosecutions and fines totalled £331,000. The work of enforcement of the Consumer Rationing Orders had been placed in the charge of Ex-Superintendent YANDELL, of the Metropolitan Police, who was appointed Chief Enforcement Officer on 1st June, 1942. A number of experienced ex-police officers had been appointed to Mr. YANDELL'S staff. In answer to a supplementary question as to whether it was proposed to dispense with the enforcement department and to depend wholly upon the activities of the police to deal with these cases, Mr. DALTON replied in the negative. In reply to a further question, Mr. DALTON replied that officials had been instructed that they must obey police rules and not act in any way as *agents provocateurs*, and that in view of certain statements which had appeared in the Press, he was very glad to give the House a definite assurance on that subject. In the instructions issued by his department appeared the following: "Extreme care must be exercised at all times by the Board's enforcement officers to avoid provocation or any activity which might be construed as provocation. In general, enforcement officers making these purchases should not hold any conversation with the trader regarding coupons and should not say anything calculated to arouse the trader's sympathy. When a shop is visited the enforcement officer should avoid as far as possible making purchases from young and inexperienced assistants." Mr. DALTON'S statement should have the effect of allaying public anxiety both as to whether the zeal of his enforcement department is adequate to its task, and also as to whether it is not occasionally misplaced.

## Compensation for War Injuries.

ON purely equitable grounds there appears at first sight to be no answer to the claim, insistently put forward in Parliament and in the Press during the last few weeks, that women should receive equal compensation with men under the Personal Injuries (Civilians) Scheme. What makes the present position appear still more unfair is the fact that in the fluctuation of the standards of payment over a period of time, the compensation payable to women appears to bear no constant relationship to that payable to men. The main justification for the present system is that the payments are analogous to workmen's compensation payments, and should be based on the comparative earning powers of men and women; it is pointed out that in some ways the Personal Injuries Scheme is more generous than the Workmen's Compensation Act. An examination of the Personal Injuries Scheme shows that there is some ground for the argument of the analogy with workmen's compensation payments. Article 8, for example, provides that an injury allowance shall be payable only for so long as the person to whom it has been awarded is incapacitated for work by the injury, and pensions payable for injuries causing serious and prolonged disablement under art. 11 depend for their amount on the extent of disablement for work. Any revision of the scales of compensation in the direction of equality of the sexes would, therefore, necessitate a radical alteration of the whole of the Personal Injuries Scheme. This is by no means an objection to the proposed reform, for there appears very little answer to the criticism that a scheme of compensation for war injuries and sacrifice, if based on economic inequalities resulting mainly from the unjust incidence of supply and demand, cannot be allowed to stand. The matter recently came to a head with the introduction of the new order with regard to the compulsory service of women as fire-guards. This at once emphasised the removal of the problem from the purely economic plane and its elevation to that of moral right and duty. A motion tabled in the Commons on 8th September by Mrs. TATE, M.P., on the subject of equal compensation for women received the signatures of 110 members. The strong support given both in Parliament and in the country to the proposed reforms should secure its thorough examination by the authorities.

## "Scorched Earth" and War Damage.

A COMMITTEE on War Damage in the East has been formed to consider the insurance problems arising out of the temporary loss and destruction of much valuable property of British nationals in Eastern countries. It recently addressed a letter to the Chancellor of the Exchequer, the Secretary for the Colonies and the Secretary for Burma, submitting that the British Government and the local government should guarantee the solvency of any Government insurance scheme, and that the Government should assume responsibility for all loss or damage. The losses, it has been stated, are mainly due to the "scorched earth" policy, and if the interests affected were confronted with the prospect of themselves making good the losses, they might be forced to abandon their intention of continuing their business. The War Damage Act, 1941, of course, applies only to England, Scotland and Northern Ireland, and the owners of property in enemy-occupied territories in the East would have to depend for their rights on whatever local legislation was in existence at the time of the occupation—probably none—or on what can be devised to meet the situation now. Clearly payments of a cost of works nature are for the present excluded, and no payments can be made until the end of the war, but if any legislation can be devised now for the individual colonies, much of the War Damage Act and the experience gained in its administration will be useful. The most interesting point that arises is with regard to the "scorched earth" problem. Nothing quite like it has fortunately arisen in this country, and it may be that those who framed the War Damage Act did not envisage that possibility. The definition of "war damage" in s. 80 is framed comprehensively but it may be doubted whether damage resulting from a "scorched earth" policy, if such a policy is not officially organised but only hurriedly devised to meet a sudden invasion, is within the terms of the definition. Such a policy seems certainly calculated "to combat the enemy" within the meaning of the section. The inclusion, however, of accidental damage occurring as a direct result of any "precautionary or preparatory measures taken under proper authority with a view to preventing or hindering the carrying out of any attack by the enemy" or of similar measures "involving the doing of work on land and taken under proper authority in any way in anticipation of the enemy action" being measures which cause a substantial risk to property, seems to indicate that only an official "scorched earth" policy is contemplated. As every possible contingency must be considered in war, it might be useful to re-examine the terms of the definition of "war damage" in s. 80, to see whether it covers any necessary, sudden and unofficial application of the "scorched earth" policy. In any projected colonial legislation on the subject affecting the over-run territories, the definition of "war damage" will have to be adjusted so as clearly to cover such a situation.

## War Damage and the Insurance Companies.

THE extent of the work of the insurance companies in this country in conducting the war damage insurance schemes on behalf of the Board of Trade was described in a special article in *The Times* of 26th August. The operation of the business and private chattels scheme, it is pointed out, involved the issue of 5,000,000 policies in twelve months. Every policy issued calls, as was pointed out by a company chairman at its meeting this year, for reference to books, the marking of record cards, and the issue of notices. The head office had to keep its branches well posted with Government decisions and instructions, more than 1,300 of which had been issued up to date. In order to consider points arising under the schemes, a War Damage (Non-Marine) Insurance Advisory Committee, representative of the companies and members of Lloyd's, was formally constituted in April, 1941, and now sits with a representative of the Board of Trade. With a proper regard to paper economy, notices of the expiry of the different periods of war risk insurances have been given, although there was no obligation to do so. The offices have also undertaken the work of settlement of claims, and thirty-five district committees of branch insurance managers have been constituted. All this work was done although the companies had now lost the services of nearly 60 per cent. of their male staff, and national registration was making severe inroads into their female staffs. The curtailment of staffs had, however, resulted in increasing difficulties in providing services which were up to the standard to which the public had become accustomed. The insurance companies looked to agents and policy-holders for their co-operation in overcoming difficulties. This appeal will not fall on deaf ears. Lawyers, better perhaps than the rest of the community, realise the meaning of undertaking extra and unremunerated burdens at a time when they are deprived of the necessary staffs to support the extra effort needed to provide a service of the high standard to which they have become accustomed, and the companies will not find any undue lack of appreciation in the legal community of their magnificent contribution to the war effort.

## Recent Decision.

IN *National Association of Local Government Officers* v. *Bolton Corporation*, on 8th September (*The Times*, 9th September), the House of Lords (THE LORD CHANCELLOR, LORD ATKIN, LORD THANKERTON, LORD WRIGHT and LORD PORTER) allowed an appeal from the Court of Appeal which had reversed a decision of the Divisional Court refusing an application by the Bolton Corporation for an order of prohibition directed to the National Arbitration Tribunal to prohibit the tribunal from adjudicating on a dispute which, in February, 1941, had been referred to it as a "trade dispute" under art. 2 (3) of the Conditions of Employment and National Arbitration Order, 1940, by the Minister of Labour. The dispute was as to whether it should be made a condition of the service of officers of the Bolton Corporation that their pay should be made up if they undertook war service. Their lordships held that this was a "trade dispute" within reg. 58AA of the Defence (General) Regulations, 1939, under which the order was made, and that even administrative, professional and technical officials of the corporation were "workmen" within the regulation. They further held that, as the corporation had power under s. 1 of the Local Government Staffs (War Service) Act, 1939, to make up the pay of their officers on war service, it was not *ultra vires* the corporation to make it a term of the contracts of their officers with the corporation that this should be done.

# A Conveyancer's Diary.

## Debts of a Deceased Person.

A FURTHER letter has reached me on the point discussed in my recent "Diary" on "Advertisements for Creditors." It is from a solicitor of learning and experience, who says that he has been an executor six times; he has never advertised for creditors and nothing untoward has ever happened. He has no doubt been lucky. His substantial proposal is that the advertisements now in use should be made needless through an amendment of the Limitation Act which would bar debts of the deceased which are not "claimed" within a year from the death. My correspondent argues that "when people die it is well known," and that a year will "meet almost all cases."

This suggestion certainly provides food for thought; obviously various details would have to be worked out, but the primary question is whether the best way of reconciling the conception of the "executor's year" with the six-year period of limitation for obligations arising on simple contracts may not be to have a sort of closing date for these claims at a period shortly before that at which the personal representative is expected to distribute the estate.

The law about the survival of claims against a deceased person has certainly got into a rather curious condition. There is, of course, a common law maxim "*actio personalis moritur cum persona.*" Quite what the reason for it may have been, I have never discovered. But at least by the time of Lord Mansfield it was inapplicable to personal actions *ex contractu* (see *Hambly* v. *Trott* (1775), 1 Cowp. 371). Moreover, various enactments from the reign of Edward III onwards had gradually whittled down the rule as applied to torts.

The final position was reached by the Law Reform (Miscellaneous Provisions) Act, 1934, by s. 1 of which it is provided that, with modifications specifically mentioned in the section, all causes of action subsisting against or vested in a deceased person shall survive against or for the benefit of his estate. The consequence is that both actions of contract and actions of tort now survive. The Act of 1934 explicitly excepts, however, actions for defamation, seduction, enticement of a spouse, and proceedings for damages for adultery. In those cases alone the action now dies with the defendant.

But proceedings for contract and for tort against the personal representatives of a deceased person are still governed by different rules of limitation. In contract, the ordinary rule applies and the period is six years (or twelve on specialty) from the accrual of the cause of action, whether or not the defendant is still alive. In tort the rules are laid down by s. 1 (3) of the Act of 1934, under which the proceedings are not to be maintainable unless they have either been started in the defendant's lifetime or are started within six months of the date when the personal representative obtained his grant. Moreover, in the latter case, the cause of action must have accrued within six months before the death of the deceased. (This last requirement could clearly not apply in contract.)

The consequence is that at the end of six months from obtaining a grant the personal representative can say confidently that he can no longer be sued for the torts of the deceased, save for such as are the subject-matter of proceedings then actually in progress; he can easily distribute the estate within the conventional year knowing that he cannot be surprised by damages for tort awarded at a later stage.

He can have no such confidence in regard to contractual claims where there is a period of six years from the accrual of the cause of action, not to mention the possibility of some extension under Pt. II of the Limitation Act, 1939. Hence the necessity for advertisements under the Trustee Act.

I think that it is very doubtful whether there is any logical ground for such a distinction. Of course, it might be said that a man's estate ought not to escape liability for his debts more easily than he would escape himself were he still alive. But likewise it might be said that there should be no accelerated escape from the liability to compensate those whom the deceased has wronged. After all, the main object of administration is to get the affairs of a deceased person wound up with as much despatch as may be. And it is no answer to say that the personal representative can escape trouble by getting the estate administered by the court. Such processes are not convenient; nor are they popular.

I confess, therefore, that I see considerable attraction in the principle suggested by my correspondent. On the other hand, I think that it might be too drastic merely to apply to contracts the rules applicable to torts. The key is in the word "claimed" as used by my correspondent. Might it not be possible to approach the matter by way of providing simple machinery for persons who allege that they are creditors of a deceased person to put their claim on record? Claims so recorded could then be enforced by action or otherwise within whatever period of limitation is now applicable. Claims in contract not so recorded would be barred, as are claims in tort, at the expiration of six months from the grant. On this basis everyone would know where they stood some months before the end of the "executor's year." The machinery for recording claims would need some thought. My correspondent says that it is well known when a person dies. But it is not so well known who are his personal representatives. I do not attach overwhelming weight to this argument, because, after all, claimants in tort might easily raise it as a complaint against the provisions of s. 1 (3) of the Act of 1939. What I have in mind is that personal representatives should get the benefit of the proposed arrangement if they can show that notices of the death of the deceased were put in one local and one national newspaper within a month of the death, and that they have themselves given similar notices of the grant, specifying their own names and the address where claims are to be lodged. They might also be compelled to give notice of the grant within three months of its date to all persons of whose claims they themselves have actual notice.

I do not pretend that this scheme has been worked out to the last detail, but something on those lines would meet my correspondent's point. The above plan would still involve the giving of some public notices, but they would be much shorter than those now in use and they would not involve the difficulty that occurs at present through no one exactly knowing whether advertisements issued under the Trustee Act are in the form which the court would have adopted. Quite apart from my original plea for paper-saving, the point raised by my correspondent seems useful in directing attention to a matter where the law still stands in need of being tidied up, and as such it could well engage the attentions of the Law Revision Committee when, as we all hope, it resumes operations.

# Our County Court Letter.

## Surface Shelter on Highway.

IN a recent case at Kingston-on-Thames County Court (*Webb* v. *Coombe Bakery* (*Teddington*), *Ltd.*) the claim was for damages for negligence. The plaintiff was a postwoman, and, while cycling along a highway, was knocked from her bicycle by a roundswoman of the defendants. The roundswoman was on foot, and she emerged from behind a surface air-raid shelter, constructed on the highway. The defendants pleaded the contributory negligence of the plaintiff. His Honour Judge Hancock rejected this plea, and held that the nearer the defendant's servant was to the shelter, the more important it was that she should take care to avoid persons using the highway. Judgment was given for the plaintiff for £85 and costs.

## Sale by Auction without Reserve.

IN a case at Leighton Buzzard County Court (*Garner* v. *Folt*; *James*, third party) the claim was for £14 16s. as damages for breach of contract. The plaintiff's case was that, at an auction sale conducted by the defendant, she had bought a set of chemist's scales for 4s. The third party, who was the owner and seller of the scales, refused to part with them at the price of 4s. Proceedings were therefore taken, and the scales were delivered up to the plaintiff shortly before the hearing. It was explained, on behalf of the defendant, that the third party had been residing at the house at which the sale took place. The scales were included in the sale, but too late to appear in the printed catalogue. They were, however, in a written list of further lots. No reserve price had been fixed, and the third party did not complain of the sale of the scales, but of the price. His Honour Judge Hurst gave judgment for costs in favour of the plaintiff against the defendant, and for the defendant against the third party.

## *Decision under the Workmen's Compensation Acts.*

## Heart Weakness from Crushed Chest.

IN *Stubley* v. *Black Sluice Internal Drainage Board* at Spalding County Court, the applicant's case was that he had done heavy work on dykes for many years, and was now aged fifty-eight. At the end of 1937 he had influenza, but returned to work subsequently. On the 11th February, 1938, the applicant was helping to load girders on to a lorry, when a girder slipped and pinned him against the lorry for a quarter of an hour. The applicant's right arm and chest were injured, and he was totally incapacitated until December, 1938. A medical certificate was then given that the applicant could do light work, and his compensation was reduced to 12s. 3d. a week. After doing various light work in 1939 and 1940, the applicant had become totally incapacitated, his medical evidence being that, as a result of the accident, there was inefficiency of the heart. The respondents' case was that the incapacity was only partial, and their medical evidence was that, although an X-ray showed injury to several ribs, there was no lung abnormality and the blood pressure was normal. An exercise test tolerance was good. Between the 22nd May and the 9th August, 1940, the applicant had received £20 9s. 4d. in wages from the respondents. His Honour Judge Langman observed that, although the applicant could not be described as of no use in the labour market, he was only fit for special work, which could not be found. The applicant was therefore totally incapacitated, although he would not necessarily remain so. An award was made accordingly, with costs.

# Landlord and Tenant Notebook.

## "Short Tenancies" under the War Damage (Amendment) Act, 1942.

THE present emergency has been responsible for the creation, by statute, of one type of "short lease" and two types of "short tenancy." The "short lease" was brought into being by the Finance Act, 1940, which defines it (s. 13 (1)) as "a lease which is not a long lease" (thereby enabling humorous writers in the lay press to add to their earnings; all in keeping with the object of the statute). The War Damage Act, 1941, introduced one kind of "short tenancy"; the other was devised soon after by the Landlord and Tenant (War Damage) Amendment Act, 1941, the incidents being set out in the first nine subsections of s. 1, and the definition supplied in the remaining subsection. The War Damage (Amendment) Act, 1942, has now added to the definition of "short tenancy" supplied by the War Damage Act, 1941, and it is this definition which I propose to discuss to-day.

It is, of course, not surprising that the three definitions vary, the objects of the three enactments being different. Incidentally, it may be noted that the definitions of "fit" and "unfit" in the War Damage Act, formerly identical with those in the Landlord and Tenant (War Damage) Act, 1941, have now been amended and thereby narrowed.

In the case of the War Damage Acts, the differentiation determines the boundary line of a "proprietary interest" and thus affects the tenant's rights to compensation.

The definition as it stood ran: ". . . a tenancy granted for a term of seven years or less (without any right of renewal which would enable the tenant to prolong the term thereof beyond seven years), and includes (*a*) a tenancy granted for a term of more than seven years but subject to a subsisting right of the landlord to determine the tenancy at or before the expiration of seven years from the beginning of the term; (*b*) a tenancy from year to year" (1941 Act, s. 95). The amending Act now adds "(*c*) a tenancy at will; (*d*) a tenancy granted for a term limited to expire, or subject to a right of the landlord to determine the tenancy, on, or at a time or within a period expiring not later than seven years after any such occasion as the following, that is to say, the termination of any war in which His Majesty may be engaged or of hostilities in any such war or of the emergency mentioned in the Emergency Powers (Defence) Act, 1939, or any other Act of the present Parliament, the occurrence of any event likely to occur on or in connection with such termination, or any similar occasion in whatsoever words described" (Sched. I, 30 (1)).

Parliamentary draftsmen are so often accused of lack of imagination that I think it is fair to pay them a compliment for the above. Briefly, it might be said that without forgetting "Coke upon Littleton" they have shown themselves alive to the implications of present-day conditions.

The four paragraphs, being preceded by the expression "and includes" are mainly declaratory. The substance of the definition is "a tenancy granted for a term of seven years or less (without any right of renewal which would enable the tenant . . . )." But the specifying of four sub-varieties in terms which make it clear that no exhaustive classification is attempted certainly anticipates doubts and quibbles.

Dealing now with some points which may be worth noting: a "right of renewal" would undoubtedly include both a right expressed in the form of an option and a right expressed by a landlord's covenant to renew. It was held in *Buckland* v. *Papillon* (1866), L.R. 2 Ch. 67, that an option to require the renewal of a lease was assignable. There may, however, be circumstances in which a particular instrument will be held to confer a strictly personal right: as to this, see *Re Cousins, Alexander* v. *Cross* (1885), 30 Ch. D. 203 (C.A.) (a will case).

A right to determine, dealt with in para. (*a*), has likewise been held to run with the land (*Roe* v. *Hayley* (1810), 12 East 464 (in that case both parties had the right, but it was the question of its passing with the reversion that was in issue)). The definition will apply only if the lease expressly gives the right to the landlord or to both parties; when the instrument is silent on the point an option to determine is exercisable by the tenant alone (*Dann* v. *Spurrier* (1803), 3 B. & P. 399).

Both a right to determine and a right to renew may be conditional, the latter often being exercisable only if covenants have been observed; but it is not to be supposed that such rights are not covered by the definition.

It was, perhaps, a little unnecessary to specify the tenancy from year to year, as is done by para. (*b*); however, it may prevent argument, and may preclude argument as to other periodical tenancies. And presumably no question can arise about the status of numerous mixed or freak tenancies which have given rise to litigation, e.g., the distinction between "from year to year" and "for one year, and so on from year to year," dealt with, *inter alia*, in *Birch* v. *Wright* (1786), 1 T.R. 380 (though those decisions would warrant the proposition that if there were a tenancy for seven years and so from year to year, this would not be a "short tenancy" for the purposes of the War Damage Acts). It seems clear that the paragraph means to provide for tenancies from year to year by implication of law, i.e., holding over, entry under void leases, etc. Each is what Parke, B., described in *Oxley* v. *James* (1844), 13 M. & W. 214, as "a term certain for one year from the date of its commencement with a growing interest during every year thereafter springing out of the original contract and parcel of it." So the fact that the growth of the interest may, by an appropriate number of springs, exceed seven years will not prevent the term from being a "short tenancy."

If, for that matter, our draftsmen had been pedantic, they might, when adding "(*c*) a tenancy at will," have deleted the tenancy from year to year, for there is authority to support the proposition that the latter is but a species of the former. However, it is more common nowadays to limit the meaning of a tenancy at will to one which may be determined at any time by notice of any or no length, or simply by the tenant quitting the premises.

The last paragraph, (*d*), represents a very praiseworthy attempt to cover what is commonly called a lease "for the duration"; note, however, that it does not deal with tenancies under which the tenant alone has the option to determine on, at a time within a period, etc. The practical possibility of such leases was declared by *Great Northern Railway Co.* v. *Arnold* (1916), 33 T.L.R. 114, when effect was given to an agreement "for the period of the war": Rowlatt, J., said somewhat forcibly that the court would, by hook or by crook, give the tenant what he had bargained for, and the common intention could be carried out by means of a lease for ninety-nine years determinable at the end of the war. I said "declared," rather than "demonstrated," because while the learned judge's cautious venturing into the realm of prophecy led to no disappointment, there is no record of how the tenancy did end, and the difficulty of specifying what the new provision calls the "event likely to occur" remains. For by statute, the 1914–1918 war ended long after the Armistice: this time there may not even be an armistice; and "cessation of hostilities" may not prove satisfactory. But the concluding words "or any similar occasion in whatsoever words expressed" certainly evidence an awareness of this difficulty; and it is clear, say, that a lease for ninety-nine years determinable by the lessor by three months' notice after the return of a named allied monarch to his capital would be a "short tenancy."

# Obituary.

MR. E. H. COUMBE.

Mr. Edward Holton Coumbe, Barrister-at-law, died on Thursday, 10th September, aged seventy-eight. He was called by Gray's Inn in 1900.

MR. H. M. CLIFFORD.

Mr. Horace Montague Clifford, solicitor, of Messrs. Cliffords, solicitors, of Derby, died on Thursday, 3rd September, aged sixty. He was admitted in 1904, and was a Past-President of the Derby Law Society.

MR. E. R. HOSKINSON.

Mr. Edward Robert Hoskinson, solicitor, of Liverpool, died on Tuesday, 8th September, aged sixty-five. He was admitted in 1907.

# Parliamentary News.

ROYAL ASSENT.

The following Bill received the Royal Assent on the 11th September:—
Appropriation (No. 2).

HOUSE OF COMMONS.

Local Elections and Register of Electors (Temp. Provs.) Bill [H.C.].
Prolongation of Parliament Bill [H.C.].
Read First Time. [10th September.

## Honours and Appointments.

The King, on the recommendation of the Home Secretary, has approved the appointment of Mr. SYDNEY GEORGE TURNER, K.C., as Recorder of Sandwich, in succession to the late Mr. Albert Crew. Mr. Turner was called by the Middle Temple in 1906 and took silk in 1931.

Mr. J. E. FISHWICK, Deputy Town Clerk of Southampton, has been appointed Town Clerk and Solicitor to the Finsbury Borough Council. Mr. Fishwick was admitted in 1930.

Mr. H. WADDINGTON, Assistant Judge of the High Court, has been appointed Judge of the Protectorate Court, Nigeria. Mr. Waddington was called by the Middle Temple in 1928.

## Wills and Bequests.

Sir Alfred Joseph Karney Young, of Capetown, formerly Chief Justice of Fiji and Chief Judicial Commissioner, Western Pacific, left estate in Great Britain £21,326.

Mr. Robert Frederick Colam, K.C., J.P., of Westcott, near Dorking, left £59,669, with net personalty £42,656.

# To-day and Yesterday.

## LEGAL CALENDAR.

**14 September.**—On the 14th September, 1748, " was executed at Odd Down near Bath, Richard Biggs, for the murder of his wife in a shocking manner, her head, breast, arms, legs and thighs being covered with bruises and wounds and her lower parts greatly swelled and black, after which he flung her dead body into the river near Bath. He was convicted on the evidence of his own son, eleven years old. When he was on the ladder he jumped down and lay flat on the ground so that the executioner was put to difficulty to hang him."

**15 September.**—Among the prisoners sentenced to death when the Old Bailey Sessions ended on the 15th September, 1759, was Nicholas Randall, an old beggar of seventy-eight, long a well-known character. He had a little garden at Turnham Green and one day seeing some children in the fields nearby he got the idea that they were plotting to steal his apples. Thereupon he let fly at them with a shotgun and one boy, John Hampden, lost an eye, while another, William Denney, was wounded in the leg. On account of his great age the jury recommended him to mercy.

**16 September.**—Serjeant Glynn, Recorder of London, died on the 16th September, 1779, and was buried at Cardington in Cornwall, the seat of his family. He had been ailing for some time, suffering greatly from gout, and in the previous year the City had allowed him to fulfil his duties by deputy. The election for the appointment in 1772 had been a close thing, every alderman being present and Glynn leading by one vote. The salary of the office was at that time raised from £600 to £1,000 a year. He stood in the first rank of his contemporaries at the Bar for legal knowledge. His character was above suspicion and his sincerity unquestioned. Chatham called him " a most ingenious, solid, pleasing man and the spirit of the constitution itself." In 1768 he entered Parliament for Middlesex after a violent and eventful election, and as a supporter of Wilkes he took a leading part in the explosive politics of the day.

**17 September.**—The criminal sensation of the year 1864 was the murder of Mr. Briggs, chief clerk of a Lombard Street banking house in a train on the North London Railway. He was battered, robbed and thrown out on the line, and investigations pointed to a young man from Cologne named Franz Muller, who a few days later had left for New York on the " Victoria." Police officers immediately sailed from Liverpool on the " City of Manchester," due to reach New York four days before the other ship. On his arrival Muller was arrested and, his extradition having been obtained, he was brought back to England on the " Etna," arriving in the Mersey on the 17th September, just two months after his flight. There was very great excitement in Liverpool from the time the ship came into sight, but the prisoner himself was completely unconcerned. He was found guilty and hanged.

**18 September.**—Clarendon House, the great palace built on eight acres of ground in Piccadilly by Lord Chancellor Clarendon at a cost of more than £40,000, contributed much to his unpopularity and downfall, for people said he raised the money in negotiating the cession of Dunkirk to the French and called it " Dunkirk House." Eleven years later, in 1675, his son sold it for £24,000 to the second Duke of Albemarle, who in turn sold it to Sir Thomas Bond as a building site. On the 18th September, 1683, Evelyn noted : " After dinner I walked to survey the sad demolition of Clarendon House, that costly and only sumptuous palace of the late Lord Chancellor Hyde, where I have often been so cheerful with him and sometimes so sad." The plan to build " a new town as it were and a most magnificent piazza " was executed but slowly. Bond Street and Albemarle Street recall the story of the site but the great Chancellor is uncommemorated.

**19 September.**—William Beavan was hanged for burglary at Newgate on the 19th September, 1811. He and another man had broken into a house at Kensington one night while the occupant, Mrs. Stratford, a market gardener, was at Covent Garden. Her little grandson, awakened by the noise, had been threatened by the intruders, and it was his evidence that hanged Beavan, for he identified him by a deformed right hand, the fingers of which were only an inch long and all adhering together.

**20 September.**—William Canniott was a footman who long supported a wife twenty years older than himself whom he had set up in a small haberdashery business. After a time they quarrelled and he ceased to see her, passing for a single man in the Cavendish Square house where he worked. There he fell truly in love with the lady's maid and eventually married her without telling his secret. At the same time he changed to another household, but there unfortunately the coachman knew he was married, and having found his wife, betrayed him. She sought him out, pestered him, and told his new wife, who reproached him with less anger than love, but would live with him no more. Then one evening while he was out walking with his first wife, who still persecuted him, he yielded to a fatal impulse and stabbed her to death with his scissors. When charged he would say nothing till he heard that the girl he loved had been arrested, and then to save her he confessed. He was hanged at Tyburn on the 20th September, 1756.

# Notes of Cases.

## HOUSE OF LORDS.

### Skelton and Others *v.* Younghouse and Another.

Viscount Maugham, Lord Russell of Killowen, Lord Macmillan, Lord Wright and Lord Porter. 27th April, 1942.

*Will—Construction—Option to purchase shares—Donee dies without exercising option—Whether personal representatives or assignee can exercise option.*

Appeal from a decision of the Court of Appeal (84 Sol. J. 620), affirming a decision of Bennett, J. (84 Sol. J. 319).

The testator, at the date of his death in 1916, was the owner of certain shares in a limited company then standing in the name of his son, E. By his will he declared that upon the decease of his wife or the previous realisation of the shares, his son E should have " the option of purchasing and becoming absolute owner " of the shares, the value of the shares to be estimated at par. In July, 1932, E, by deed, assigned the benefit of the option to the trustees of a settlement to secure an annuity for his wife. The testator's widow died in May, 1939. E died in June, 1939, without having exercised the option. In November, 1939, E's executors gave notice in writing purporting to exercise the option, and in February, 1940, the trustees of the assignment of 1932 also gave notice purporting to exercise the option. This summons was taken out by one of the trustees of the testator's will for the determination of the question whether the option to purchase the shares had been validly exercised since E's death by his executors or by the trustees. Bennett, J., held that on the true construction of the will the option given to E was a personal right not exercisable by any other person. He also held that an option given by will was *prima facie* personal to the donee, and did not pass to the donee's executors (*In re Cousins* (1885), 30 Ch. D. 203). E's executors and the trustees of the settlement of 1932 appealed. The Court of Appeal (Clauson and Scott, L.JJ.) held that the right to purchase the shares on the widow's death was given to E alone and, on the true construction of the will, was not exercisable by E's executors or assigns. They did not agree that Bennett, J., was bound by authority to hold that an option by will, as distinguished from an option given by contract, was *prima facie* personal to the donee, no such general principle being laid down in *In re Cousins* (1885), 30 Ch. D. 230. Luxmoore, L.J., dissenting (although he agreed with regard to the effect of *In re Cousins, supra*), held that the option conferred a valuable right, and that there was nothing in the testator's will which forbade its assignment. The same appellants appealed to the House of Lords.

Their lordships took time.

Viscount Maugham said that as the shares were, at the date of the will, worth considerably more than their nominal value, the option was at all material times of considerable pecuniary value. Bennett, J., had based his decision on the statement in " Jarman on Wills " (7th ed., vol. I, p. 73), that " an option to purchase given by will to A B is *prima facie* personal to him, and does not pass to his executors on his death." Bennett, J., held that *In re Cousins, supra*, supported that proposition. Luxmoore, L.J., had expressed the opinion that *Wright* v. *Morgan* [1926] A.C. 788 laid down a general principle of construction that there was nothing in the nature of an option of purchase conferred by a will on a named person which, in the absence of a context, pointed to non-assignability, and that there was nothing in the present will which pointed to it. He (Lord Maugham) agreed with the view of all three lords justices on *In re Cousins, supra*. That case depended on the words used by the testator. Nor, in his opinion, had Lord Dunedin intended in *Wright* v. *Morgan* (at p. 795) to lay down any general rule applicable to the kind of case now before the House. The question in the present case did not depend on, and was not affected by, any *prima facie* view one way or the other. Such an option might be given to a man personally, so that it was to be exercised by him and no one else ; or it might be given to him and his executors, administrators and assigns, and not the less that those additional words were not used. The matter depended on the true construction of the will in the light of any surrounding circumstances which were properly admissible. The passage cited from " Jarman on Wills " was incorrect. There were sufficient grounds here for holding that the option was personal to E, and was therefore not assignable or transmissible. For example, the gift was conditional on the happening of the first of two events, and it could not be certain that E would be alive when the option became exercisable. Again, on the death of the widow the whole of the testator's estate was divisible between his sons, E. and L, if living. Thus, any exercise of the option would enure to E at the expense of L. The reference " to the said shares or any part thereof " seemed to suggest that the testator might have thought that, in certain possible events, the elder brother might prefer to exercise the option, at any rate, on all the shares. *In re Cousins, supra*, was rightly decided on the grounds given by Lindley and Cotton, L.JJ., *In re Madge* (1928), 44 T.L.R. 372, was also undoubtedly correct. The appeal should be dismissed.

The other noble and learned lords delivered concurring opinions.

Counsel : *Roxburgh*, K.C., and *Pascoe Hayward* (for *T. A. C. Burgess*) ; *Vaisey*, K.C., and *Winterbotham*.

Solicitors : *S. F. Miller, Matthews & Co.*, for *Taylor, Kirkman and Mainprice*, Manchester ; *Charles Russell & Co.*, for *Skelton & Co.*, Manchester.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

---

Station Sergeant George Box, chief warrant officer at Bow Street Police Court, has retired.

## COURT OF APPEAL.

**Earl Fitzwilliam's Collieries, Ltd. *v.* Phillips (Inspector of Taxes).**

Lord Greene, M.R., du Parcq, L.J., and Singleton, J. 17th April, 1942.

*Revenue—Income tax—Coal-mining lease—Colliery company to pay fixed sum per acre worked "as liquidated damages in respect of the overlying surface"—Whether "rent" for an "easement"—Whether deductible from profits—Finance Act*, 1934 (24 & 25 *Geo.* 5, *c.* 32), *s.* 21 (1), (4) (*b*), (*c*).

Appeal from a decision of Lawrence, J. (85 Sol. J. 434; 58 T.L.R. 22).

By a coal-mining lease dated the 31st January, 1935, the appellant company were granted, *inter alia*, the right to work minerals under the demised land, and undertook, in addition to paying the rent reserved, to pay as "acreage or footage rents" £10 or £5, according to seam, per acre "of so much of each of the other seams of coal demised as shall have been worked and gotten during the preceding half-year as liquidated damages in respect of the overlying surface . . ." The company claimed that those payments were admissible deductions from their profits. The Special Commissioners held that there was the grant of an "easement" within the meaning of s. 21 (4) (*b*) of the Finance Act, 1934, and that the payments were so related to the exercise of the right granted that they must be regarded as periodical payments in the nature of rent in respect of the easement, and so not deductible. Lawrence, J., affirmed that decision, and the company now appealed.

Lord Greene, M.R., discussing the first question, whether the right granted was an "easement," said that it was sought to distinguish *Inland Revenue Commissioners* v. *New Sharlston Collieries, Ltd.* [1937] 1 K.B. 583; 81 Sol. J. 56, on the ground that the right in respect of which the payments here in dispute were to be made went further than the right acquired in that case, because it was a right to be exempt from any claim for damages caused by subsidence. It was argued that the company acquired under their lease the right to let down the surface without liability to be restrained by injunction. It was conceded that if the payments had been in respect of that right only the case cited would have covered the present. It was, however, contended that the company were given an additional right which exempted them from liability for damages in the exercise of the right already conferred on them, and was in effect neither more nor less than a composition paid for damages. That distinction could not stand in view of the reasoning on which the decision cited was based. That case decided conclusively, so far as that court was concerned, that the right acquired for the payments here in question was an "easement" within s. 24 (1) (*b*). There remained the questions whether these were annual or periodical payments and, if so, whether they were payments in the nature of rent. They were clearly periodical payments. They had, however, to be in the nature of rent, if they were to be chargeable. "Payment in the nature of rent" must be construed in relation to the type of subject-matter in respect of which the payment had to be made. The subject-matter here was an "easement" within the meaning of an artificial statutory definition. It was, therefore, a subject-matter which, considered from the strict point of view of the law apart from the wording of the particular subsection, involved a payment which analysis showed to be a commutation of a claim for damages. Nevertheless, once the right was an easement within that highly artificial definition, an annual payment in respect of that easement could not fail to be a payment in the nature of rent within the meaning of the relevant words in their context. It was not a question of what the nature of rent was *in vacuo*, but of what the words "payment in the nature of rent" meant in relation to this particular type of subject-matter. The appeal must be dismissed.

Counsel: *Heyworth Talbot; the Attorney-General* (Sir Donald Somervell, K.C.), *Stamp* and *Hills*.

Solicitors: *Andrew, Purves, Sutton & Creery; Solicitor of Inland Revenue.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

## COURT OF CRIMINAL APPEAL.

**R. *v.* Bonnyman.**

Viscount Caldecote, C.J., Charles and Cassells, JJ. 28th April, 1942.

*Criminal law—Manslaughter by neglect—Helplessness of deceased—Assumed in summing up—Extent of negligence required for manslaughter—"Reckless"—"Wicked."*

Appeal from conviction.

The appellant, a doctor, was convicted of the manslaughter of his wife by neglect, and sentenced to twelve months' imprisonment. He married in 1930, and soon afterwards discovered that his wife had become addicted to drugs, chiefly morphia. He also became an addict himself. They were both confirmed addicts from 1940. The wife obtained her own morphia in diluted form, and then concentrated it for injection by a syringe. In February, 1940, the appellant's mother summoned a doctor, who found the wife hysterical, in a dreadful physical condition, and unwilling to go to hospital. The doctor got her to hospital, and a great improvement in her condition resulted from treatment. She returned to her home, but in April, 1941, was discovered again to be in a dreadful condition. The appellant expressed his awareness of the risk to himself of allowing her to be in that condition. The evidence of witnesses called for the defence was that the woman was for the last months of her life helpless and incapable of deciding what was best for herself. She was obstinate in her refusal to go to hospital. She died from under-nourishment and the consequences of morphia poisoning, when her weight had fallen to less than four stone.

Viscount Caldecote, C.J., giving the judgment of the court, said that it was complained that the jury had not been invited to consider whether the appellant's wife was as helpless as the prosecution alleged, but that the judge had throughout assumed it, reliance being placed on *R.* v. *Chattaway* (1922), 17 Cr. App. Rep. 7. There the question of helplessness was not left to the jury, but Lord Hewart, C.J., said that, although it was a question for them there could be no doubt in that case what their answer would have been if they had been expressly asked whether at the material time the deceased was helpless. That case made it impossible to say that the conviction should be quashed because the jury were not asked to decide that question. It was then argued that the jury had been wrongly directed as to the quality of negligence which they must find if they were to convict the appellant. The question was what qualification of the mere word negligence was required in order to indicate to a jury the degree of negligence which they must find to justify a verdict of manslaughter. Counsel for the appellant criticised Humphreys, J.'s objection to the adjective "wicked" as implying a wicked intention. Humphreys, J., had preferred "reckless," which Lord Atkin had stated in *Andrews* v. *Director of Public Prosecutions*, 81 Sol. J. 897; [1937] A.C. 576, most nearly to cover the case. "Reckless," therefore, seemed the preferable word. "Wicked" was used in *Reg.* v. *Nicholls* (1874), 13 Cox C.C. 75, *per* Brett, J., at p. 76, but he used the word "reckless" in amplifying his remarks. Humphreys, J., had, in the opinion of the court, given the jury directions not only ample and careful, but such as to make them appreciate what they had to consider. Having referred to the judgment of Erle, C.J., in *Reg.* v. *Charlotte Smith* (1865), 10 Cox C.C. 82, at p. 94, Lord Caldecote said that it could not be doubted that the appellant's wife was unable to withdraw herself from the appellant's care. She was as helpless as she could be, and it was the appellant's plain duty to give her aid and treatment which he had withheld. The appeal must be dismissed.

Counsel: *Linton Thorpe*, K.C., and *C. R. Warren; M. Bull.*

Solicitors: *Registrar of the Court of Criminal Appeal; Director of Public Prosecutions.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

# War Legislation.

### Statutory Rules and Orders, 1942.

E.P. 1791. **Bulbs.** General Licence, August 31.

E.P. 1733 to 1746 (one document). **Consumer Rationing** (No. 12) Order, August 25, and General Licences and Directions, August 25 and General Licence, August 29, under Consumer Rationing (No. 8) Order, 1941.

E.P. 1764. **Control of the Cotton Industry** (No. 36) Order, August 30.

E.P. 1816. **Control of Paper** (No. 47) Order, September 4.

E.P. 1817. Control of Paper (No. 48) Order, September 4.

E.P. 1818. Control of Paper (No. 48) Order, 1942. Directions No. 1, September 4.

E.P. 1819. Control of Paper (No. 48) Order, 1942. Directions No. 2, September 4.

No. 1749. **Customs.** Export of Goods (Control) (No. 36) Order, Aug. 31.

No. 1794. **Diseases of Animals.** Foot and Mouth Disease (Disinfection of Road Vehicles) (Amendment) Order, August 31.

E.P. 1582. **Employment in Essential Undertakings in Ecuador.** Order, August 20, under reg. 58AC of the Defence (General) Regs., 1939.

E.P. 1583. Employment in Essential Uudertakings in Peru. Order, August 20, under reg. 58AC of the Defence (General) Regs., 1939.

E.P. 1747. **Essential Work** (Iron and Steel Industry) (No. 3) Order, August 27.

E.P. 1784. **Fish** (Licensing of Dealers and Processors) Order, September 1.

E.P. 1792. **Flour** (Registration) Order, September 2.

E.P. 1751. **Food Control Committees** (Constitution) Order, Aug. 28.

E.P. 1799. Food Transport Order, 1941. Directions, September 3.

E.P. 1822. Food Transport Order, 1941. Directions, September 5.

E.P. 1800. Food Transport Order, 1941. Order, September 2, amending the Food Sector Scheme Directions, August 18.

No. 1793. **Gas** (Special Orders) Rules, August 8.

E.P. 1712. **Gloves** (No. 3) Directions, August 29.

E.P. 1810. **Limitation of Supplies** (Misc.). General Licence and Direction, August 31, re supply of Toys and Indoor Games.

E.P. 1821. **Meals in Establishments Order,** 1942. Amend. Order, September 5.

E.P. 1804. **Milk** (Control of Supplies) Order, September 4.

E.P. 1785. Milk (Sales to Distributors) Order, September 1.

E.P. 1790. **Phosphatic Fertilisers Order,** September 1.

No. 1808. **Police,** England and Wales. Regulations, August 31.

No. 1809. Police (Women), England and Wales. Regulations, August 31.

No. 1762. **Prevention of Fraud** (Investments) Act Licensing (Amendment) (No. 2) Regulations, September 2.

No. 1802. **Railway.** Owner's Risk Rates. Order, July 28, modifying orders determining reductions to be made from standard charges where damageable merchandise is carried by railway under owner's risk conditions.

E.P. 1699. Railways. Transport of Horses Direction (No. 3), August 24.

E.P. 1770. **Salvage of Waste Materials** (No. 4) Order, August 31.

E.P. 1761. **Woven Wool Cloth** (Manufacture and Supply) (No. 2) Directions, August 31.

### Stationery Office.

**List of Statutory Rules and Orders,** August 1–31, 1942.

### Treasury.

**Defence Regulations.** Vol. II, Misc. Regulations. 11th Edition, August 6.